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DEPARTMENT OF NATURAL RESOURCES

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Division of Oil, Gas and Mining

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September 9, 2014

Chris Kaiser
Kennecott Utah Copper LLC
4700 Daybreak Parkway
South Jordan, Utah 84095

Subject: Applicability of R647 Rules to Mine Plan Amendments, Kennecott Utah Copper LLC, Bingham Canyon Mine, M/035/0002, Salt Lake County, Utah

Dear Mr. Kaiser:

The Division of Oil, Gas and Mining (Division) appreciates the relationship and cooperation that have developed over the past several years with Kennecott Utah Copper. The Division especially applauds the work being done to resolve some of the long-term problems associated with the waste rock disposal areas and the reclamation work done in these areas.

The cover letter accompanying the cultural resources inventory report for the east waste rock area amendment contains the following statement:

Kennecott believes that these activities [modification of the east waste rock disposal areas] are a continuation of mining activities authorized under the Bingham Mine Reclamation Permit M/035/0002 ("Permit") and are occurring within the boundaries designated in the Permit. Because these private activities are authorized by the Permit, which was issued in 1978 and predated cultural resource preservation and consultation requirements, there is no government undertaking within the meaning of Utah Code Section 9-8-404.

The letter dated August 25, 2014; concerning the south end waste rock placement contains similar language about the Notice of Intention to Commence Large Mining Operations:

RTK [Rio Tinto Kennecott] is of the understanding that all activities within this NOA [Notice of Activity] are a continuation of mining activities authorized under the Bingham Canyon Mine Reclamation Permit M/035/0002 and are occurring in the areas designated by the permit and do not constitute an amendment to mining activity. Details regarding the activities summarized in this notice will be included in a future update to the mining and reclamation plan on file with the division.



The Bingham Canyon permit authorizes mining operations at the mine but does not exempt Kennecott Utah Copper from the necessity to amend or revise the Notice of Intentions to Commence Large Mining Operations as operations change. The Utah Mined Land Reclamation Act says in 40-8-18:

- (1) (a) Since mining operations and related reclamation plans may need to be revised to accommodate changing conditions or new technology, an operator conducting mining operations under an approved notice of intention shall submit to the division a notice of intention when revising mining operations.
- (2) (a) The notice of intention to revise mining operations will be designated as an amendment to the existing notice of intention by the division, based on rules promulgated by the board.
- (3) (a) A notice of intention to revise mining operations, if not designated as an amendment of a notice of intention as set forth in Subsection (2), shall be processed and considered for approval by the division in the same manner and within the same time period as an original notice of intention.
- (4) (a) If a change in the operation occurs; a mining operation representative shall submit an amendment to the notice of intention.

Although the activities in the east waste rock disposal area and in the south end waste rock placement area are within the permitted area for the Bingham Canyon mine, the Division considers these proposals (Notices of Activity) to be amendments or revisions to the mining operations that require submission of the proposed work and the Division's approval. Other modifications to the original Notice of Intention that have occurred since 1978, including numerous updates to the Notice of Intention, have been submitted, reviewed, and approved.

Because these proposals or Notices of Activity require the Division's review and approval and affect previously undisturbed areas, they are also considered to be undertakings within the scope of UCA 9-8-404 which requires that the Division consider the undertakings' effects on cultural resources and provide an evaluation of those effects to the State Historic Preservation Officer (SHPO). Accordingly, the cultural resource surveys and evaluations that were completed by Kennecott Utah Copper need to be—and have been—submitted to SHPO for their concurrence.

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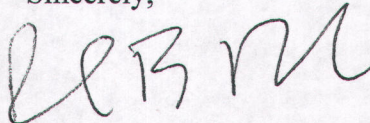
The Division has also considered which rules pertain to the Bingham Canyon mine, whether it should be the rules in effect in 1978 or the R647 rules. Regardless of which rules apply, the changes in mining operations require submission of changes and approvals for consistency. The Division believes that Rule R647-1-102.1.11 as adopted in 1988 is consistent with the Act at 40-8-18 quoted above and requires that the R647 rules apply to revisions to the Notice of Intention or permit. This rule says:

Effective November 1, 1988, the following rules apply to . . . mining operations planning to commence, or resume operations with the state of Utah. These rules will not apply to existing mining operations approved prior to the effective date of these rules, or to notices of intention or amendments filed prior to these rules. **However, these rules will apply to any revisions to an approved notice of intention filed subsequent to the effective date of these rules** (emphasis added).

The term "revised" is used in Section 40-8-18 (1) (a) of the Act as any kind of modification to the Notice of Intention. The R647 rules have more specific definitions that establish procedural differences for review. The rules do not exempt an amendment from review. An amendment is defined as an insignificant change to the Notice of Intention, and a revision is a change substantially affecting the nature of the reclamation plan. The south end waste rock placement proposal was reviewed as an amendment.

Thank you for your cooperation. We look forward to working with you on these two projects which we believe will enhance reclamation.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Baker", written over a faint rectangular stamp.

Paul Baker
Minerals Program Manager

PBB: eb

Cc: Leslie Heppler, Steve Alder, Douglas Crapo, Dana Dean, John Baza
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